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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1562

LEON BURAS, JR., et al.,
Petitioners,

vs.

UNITED STATES OF AMERICA, CHEVRON OIL COMPANY, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Brief in Opposition

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Brief in Opposition for Respondents Chevron Oil Company, et al.

QUESTIONS PRESENTED

The questions presented are:

1. Whether under Louisiana law the perfect record title of the United States to the lands in dispute can be defeated by purported "patents" from the State of Louisiana of which there is no record in the State Land Office and for which no money was ever paid into the State Treasury.

2. Whether under Louisiana law an after-acquired title could pass to the predecessors of Petitioners under a printed form of deed providing for conveyance "with full and general warranty," changed by the parties to read "without warranty of title."

3. Whether the Fifth Circuit erred in refusing *en banc* to abstain and certify questions of state law to the Louisiana Supreme Court.

STATEMENT OF THE CASE

Petitioners' Statement of the Case omits significant facts and is devoted in large part to allegations of wrongdoing on the part of the United States and Chevron. These allegations were made by Petitioners below, and are wholly refuted by the record. In any event, insofar as they are relevant at all, they relate solely to the issue of adverse possession by the United States and its predecessors, an issue the Fifth Circuit did not reach.

The significant facts relevant to the issues decided by the Fifth Circuit are:

In the 1880's two friends and brothers-in-law, Octave Barrois and Pierre Leon Buras, commenced hunting and trapping on marsh lands near the mouth of the Mississippi River which then belonged to the United States. In 1894 Barrois gave to the Register of the Land Office of the State of Louisiana a sum of money, a part of which had been contributed by Buras, for the future purchase of a portion of these lands in the event they were later conveyed to the State, which they were. The Register, who had no authority to receive such payments, stole the money instead of depositing it with the State Treasurer, who was the designated receiver for payments for State lands (Pet.App. p. 8a). In 1898 the crooked Register, to satisfy Barrois' repeated

demands, apparently gave to Barrois some fictitious patents for the lands, of which there is no record in the State Land Office. In 1899 Barrois had these "patents" copied into the conveyance records of Plaquemines Parish, the county in which the lands are located. Also in 1899, Barrois conveyed to Pierre Leon Buras a part of these lands, retaining the remainder for himself. The deed from Barrois to Buras referred to the spurious "patents" as the sole source of Barrois' title, was changed by the parties expressly to exclude warranty of title, and recited as consideration a sum equal to the same amount, per acre, as that paid by Barrois to the crooked Register.

In 1900 the crooked Register (Lanier) committed suicide, and it was revealed that he had stolen the money of numerous applicants for State lands. A new Register (Smith) was appointed. In 1903 Barrois again paid for the lands covered by the 1898 instruments, the money this time reaching the Treasurer, and the new Register issued to Barrois genuine patents duly entered in the State Land Office records.[1]

In the meantime, Pierre Leon Buras had quit his occupancy of that part of these lands purportedly conveyed to him by Barrois in 1899, and ceased paying taxes thereon (although he continued to pay taxes on other property he owned). In 1903, after obtaining the genuine patents, Barrois again conveyed most of the lands he had previously conveyed to Pierre Leon, but this time to Augustin Buras, a professional hunter who had married Pierre Leon's daughter Angeline[2] in 1902 or 1903, this time by a deed re-

1. The fact that they are dated one day earlier than the Treasurer's receipts showing payment for the lands they cover does not affect their validity.

2. Pierre Leon donated to Angeline land on which Augustin and Angeline built their house, near that of Pierre Leon, in Venice, La.

ferring to the 1903 patents as the source of his (Barrois') title, and this time warranting title. It is the lands conveyed by this deed which are in controversy here.[3]

In 1903, Augustin Buras had the 1903 deed from Barrois recorded in Plaquemines Parish, and began paying taxes on the lands covered by the deed. In the years immediately following 1903, Barrois, Pierre Leon Buras and Augustin Buras continued to maintain friendly relations: Barrois visited Pierre Leon and his family regularly; Augustin visited his father-in-law, Pierre Leon, about once a week, and Pierre Leon traded regularly at a grocery store Augustin had; and Pierre Leon's son Theodore Buras lived part of the time with his father and part of the time with Augustin sometime prior to his (Theodore's) marriage in 1914. However, after he quit his occupancy of the lands in controversy and ceased paying taxes thereon, Pierre Leon Buras never made any known claim of title thereto; and after Pierre Leon died in 1908, in his succession proceedings none of his children or other heirs made any claim to the subject lands, although they were represented by counsel, and other lands belonging to Pierre Leon in Venice, Boothville and Buras, La. were auctioned off in the succession proceedings.

In 1911, Augustin Buras sold the lands conveyed to him by Barrois, and they were eventually purchased by the United States from Thomas Leiter[4] for inclusion in the Delta Migratory Waterfowl Refuge. The United States and its predecessors in interest have paid taxes on the lands

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3. During his lifetime, Pierre Leon also donated unstated but equal amounts of land to each of his sons.

4. The title questions presented in this case are *not* the same as the title questions presented in *Leiter Minerals, Inc. v. United States* (1957) 352 U.S. 220; (5th Cir. 1964) 329 F.2d 85.

(except the United States) and have exercised acts of ownership with respect to the lands continuously since 1903.[5]

In 1949 the United States granted oil and gas leases on the lands to Frank J. Lobrano and Allen L. Lobrano. Chevron Oil Company acquired the operating rights under these leases. In 1950 and 1951, Chevron drilled eight productive oil wells on the lands, and there has been continuous production since.

In 1954, more than 50 years after Pierre Leon Buras quit his occupancy of the lands and Augustin Buras took title to them, more than 45 years after Pierre Leon's succession proceedings, and shortly after the discovery of oil on the lands, Petitioners herein brought suit in a Louisiana state court asserting title to the lands in controversy as the heirs of Pierre Leon Buras, and seeking the eviction of the mineral lessees. The United States was not named as a defendant. In 1955 the United States instituted this action in the United States District Court for the Eastern District of Louisiana to quiet its title to the lands in question, joining Chevron and the Lobranos as nominal defendants.

At the trial, Petitioners sought to resurrect a title to the lands in Pierre Leon Buras, and to oust the title of Augustin Buras.[6] They based their claim on (a) the counterfeit "patents" given to Barrois in 1898 and Barrois' 1899 deed to Pierre Leon Buras, and (b) the contention that because of the valid 1903 patents to Barrois, an after-acquired title passed to Pierre Leon Buras under the 1899 no-warranty deed.[7]

The originals of the 1898 documents having been lost, Petitioners sought to prove these "patents" by offering

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5. Both Petitioners and the United States claim under members of the Buras family, Petitioners under Pierre Leon Buras, and the United States under his son-in-law, Augustin Buras.

6. Three of the Petitioners are also heirs of Augustin Buras.

7. Insofar as they base their claim on after-acquired title, Petitioners recognize the validity of the 1903 patents.

certified copies of the 1899 Plaquemines Parish records, into which the spurious "patents" had been copied by the Parish Clerk. These certified copies of the parish records were admitted into evidence over the objection of the Respondents. If admissible, under a Louisiana statute (La. R.S. 13:3726 (1950)) these certified copies were "entitled to the same credit as the original[s]."

Petitioners requested and received a jury trial. In response to an interrogatory, the jury found that it could not not say whether the Governor had in fact signed the 1898 originals.

After a District Court decision in favor of Petitioners, a three-judge panel of the Fifth Circuit unanimously reversed, holding that the United States has perfect record title, and that the Buras heirs (a) had failed to meet their burden of proving their title, and (b) did not obtain an after-acquired title under the deed expressly excluding warranty.[8]

Petitioners then sought a rehearing *en banc*, asking that the judgment of the panel be reversed, or in the alternative —and for the first time—that the questions of state law involved be certified to the Louisiana Supreme Court. The Attorney General of Louisiana, in an *amicus curiae* brief,

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8. The Court did not reach other arguments presented by Respondents, namely:

1. It would have been error for the District Court to admit into evidence the original 1898 "patents," since the State has no record of them, and was therefore error for the District Court to admit into evidence, over objection by the Respondents, the parish copies of these documents;

2. The public records doctrine precludes the application of the doctrine of after-acquired title in this case;

3. On the facts of this case there is a presumption of a lost grant from Pierre Leon Buras to the predecessors of the United States which eliminates the claim of Petitioners; or alternatively, this question should have been submitted to the jury; and

4. Both the United States and its predecessors in title acquired good title to the lands in question by adverse possession.

supported Petitioners' request for reversal, but not their request for certification. The petition was denied 14 to 1, with Chief Judge Brown voting to grant a rehearing to enable the court to order certification.[9]

ARGUMENT

I.

Petitioners argue that the Fifth Circuit decision was wrong under state law in several respects. We shall show that it was not.

A.

Petitioners contend that they hold title under "senior patents" issued in 1898, that the United States holds under "junior patents" issued in 1903, that under Louisiana law the United States has no standing to attack the "senior patents," and that therefore Petitioners' claim must prevail. There are several answers to this:

1. Act 75 of 1880, which governed the sale of State lands at the time of the 1898 "patents," provided that it was the duty of the Register of the State Land Office to keep accounts of the sales of State lands in the official records of the State Land Office (Pet.App. pp. 6a-7a), and made it a felony to record any sale of State lands without having on file a Treasurer's receipt showing payment for the lands (Pet.App. p. 7a). As the Court below said, the statute is "explicit" and "clear on its face" in imposing these requirements.[10]

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9. Among the judges who voted to deny a rehearing was Robert A. Ainsworth, Jr., a distinguished Louisiana lawyer and former Federal District Court Judge in Louisiana.

10. *Saltenberry v. Loucks* (1853) 8 La.Ann. 95, which arose under an 1844 Louisiana statute for the sale of state lands by the Register for the State Land Office and the State Treasurer as Receiver, involved facts similar to those of this case: A purchaser

The decision of the Fifth Circuit notes the strong reasons of public policy requiring compliance with the requirements of statutes such as Act 75 of 1880. The central records of the State must control to insure the orderly administration of its land transactions and to prevent frauds against the State and those who purchase from it. It is the State's official records to which one must look to determine whether the State has divested itself of its lands, and these records cannot be contradicted or enlarged by other and parol evidence (30 Am.Jur.2d (Evidence, § 1027) 162).

The Louisiana cases so hold. Thus in *Chalmers v. Frost-Johnson Lumber Co.* (1918) 143 La. 836, 79 So. 424, the plaintiff claimed title under a receipt purporting to have been issued by the receiver of the State Land Office in 1862; the defendant claimed under two state patents issued in 1891. The plaintiff's receipt was not recorded in the State Land Office records; the defendant's patents were. In holding for the defendant the Louisiana Supreme Court said:

> "It is not necessary, however, to consider the defendant's denial that the receiver's receipt held by the plaintiff is genuine. It was not recorded in the land office when the patent issued to defendant's author in title" (79 So. 424).

The controlling effect of the official records of the State Land Office as set forth in *Chalmers* is further settled by

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paid his money to the Register and obtained a certificate or receipt; the Register did not turn the money over to the Treasurer and made no entry of the transaction in the Land Office records; the successor to the Register refused to issue a patent to the purchaser. Suit was then brought on the Register's bond to recover the money, and in denying recovery the Louisiana Supreme Court said:

> "To receive the price of the lands sold, is not one of the duties required of him [the Register] by law—that duty is expressly assigned to the State Treasurer. The plaintiff, knowing this, deposited the money in the hands of [the Register], thus constituting him his agent to make the payment" (8 La.Ann. 95, 96). (Words in brackets added.)

the decision of the Louisiana Supreme Court in *Ellis v. Louisiana Planting Co.* (1920) 146 La. 652, 83 So. 885.[11]

The public policy underlying these decisions is more fully articulated in the decisions of this Court in *United States v. Castro, et al.* (1861) 24 Howard (65 U.S.) 346, and *United States v. Vallejo* (1862) 1 Black (66 U.S.) 541, both of which held that private title to public lands (then belonging to Mexico) could not be proved by original grants, even though genuine, not reflected in the archives of the Mexican authorities. In holding such a grant inadmissible as parol evidence, this Court said in *Castro*:

> "• • • it would seem from the case before us that the board of land commissioners and the Circuit Court regard written documentary evidence, produced by a claimant from a private receptacle, and proved by oral testimony, as of equal authenticity and entitled to equal respect with the public and recorded documents found in the public archives. But such a rule of evidence is altogether inadmissible. It would make the title to lands depend upon oral testimony, and consequently render them insecure and unstable, and expose the public to constant imposition and fraud" (65 U.S. 346, 351).

In *Vallejo* this Court stated:

> "We add, it is important, also, that a record should be made of these grants, so that the Government may be advised in respect to the portions of the public domain that have been sold or disposed of, and as a security against the frauds of the public officers upon whom the power of making the grants has been conferred. • • •

11. In the Fifth Circuit, Petitioners contended that *Chalmers* and *Ellis* were impliedly overruled by *Egle v. Constantin* (1941) 198 La. 899, 5 So.2d 281. However, this case was concerned only with assessment problems, and the validity of a tax sale. It gave the Fifth Circuit no difficulty.

> "Without this guard, the officers making the grants, as, in the present instance, the Governor and Secretary, would be enabled to carry with them in their travels blank forms, and dispose of the public domain at will, leaving the Government without the means of information on the subject till the grant is produced from the pocket of the grantee" (66 U.S. 541, 555).

As the facts show, this is not a case involving some procedural error in the issuance of the 1898 "patents." To the contrary the evidence—of which the courts can take judicial notice—shows that there is no record of any such patents in the State Land Office or of the payment for any such patents in the Treasurer's Office, and the purported "patents" themselves bear fictitious numbers, and fictitious references to State Land Office and State Treasurer's records.[12]

Petitioners repeatedly gloss over these facts by statements such as "This title dispute stems from the dual issuance of patents by the State of Louisiana" (Pet. p. 5), and "In 1898, formal patents issued" (Pet. p. 7).

In arguing that they hold under actual patents, Petitioners are urging a rule of law that would open virtually every title emanating from the State of Louisiana under Act 75 of 1880 to fraudulent attack. In their view, the official records of the State Land Office are meaningless in the face of a document from the parish records purporting to

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12. According to the parish copies, the 1898 "patents" bore specific patent numbers in the State Land Office records, were recorded in specific patent books and folios in those records, and were founded on specific numbered State Treasurer's receipts. However, the official records of the State Land Office show that patents conforming to these identifying data were issued to entirely different persons, and covered entirely different lands situated in other parishes. Thus the 1898 "patents" are void on their faces.

be a copy of a patent, and bearing an earlier date than a valid State patent, without one shred of independent evidence to support the validity of the original document. If this astounding proposition were correct, despite the Louisiana law to the contrary (see *Chalmers* and *Ellis*, supra), the procedure to destroy a title derived from the State would be extremely simple: Check the State Land Office records to determine the date on which a State patent issued for a valuable piece of land; prepare a forged and ancient-looking patent for that land bearing an earlier date and record it in the parish; tear up the forgery immediately after it has been recorded so as to preclude its examination; claim title under the parish record copy of the forgery!

La. R.S. 13: 3726 provides that the parish copies of state patents "shall be admissible in evidence * * * *in the same manner*, and shall be entitled to the same credit as the original[s]." (emphasis added). Under *Castro, Vallejo* and the general rule of evidence, the original 1898 documents would not have been admissible in evidence, since the State has no record of them. Under La. R.S. 13: 3726, the parish copies were likewise inadmissible.

Thus under both Louisiana and general law there are no "senior patents," Petitioners cannot establish their title by documents of which the State has no record, and it was error for the District Court to permit them to attempt to do so. On this ground alone, Petitioners' claim must fail, and the record title of the United States must prevail.

2. As both the District Court and the Fifth Circuit properly held, under Louisiana law Petitioners had the burden of proving their title. In attempting to do this, they offered in evidence certified copies of parish records of what purported to be 1898 "patents." Assuming these were

properly received in evidence (which they were not) the jury found that it could not say whether these "patents" had in fact been signed by the Governor. Under La. R.S. 13: 3726 and Louisiana's ancient records statutes, Petitioners claimed a presumption that the 1898 "patents" were genuine. However, section 14 of Act 75 of 1880 expressly provides that the Governor shall issue patents only "on presentation of the Treasurer's receipt" (Pet.App. p. 10a), and the evidence is that no such receipt existed. Under Louisiana law, there is a presumption that State officials do their duty properly (see *Dubuc v. Voss* (1867) 19 La.Ann. 210). Accordingly, a presumption arose that the Governor did *not* sign the 1898 documents. These countervailing presumptions left the question as to the authenticity of the 1898 "patents" on dead center (see *Moody v. Gossen* (La.App. 1960) 125 So.2d 264), and insofar as their claim rests on the 1898 documents, Petitioners therefore failed to sustain their burden of proving their title.[13]

3. Thus, because of points 1 and 2 just above, the question of standing to challenge the 1898 "patents" should never be reached.

Even if it is reached, there is nothing in the law of Louisiana or of other jurisdictions which prevents the United States and Chevron from attacking the 1898 documents.

In the first place, the very statute on which Petitioners rely to offer the copies of their "patents" in evidence (La. R.S. 13:3726) provides that "the opposite party shall be allowed to disprove the genuineness of such original."[14]

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13. While La.R.S. 13:3726 imposed on Respondents the burden of going forward, which they met by showing the absence of any Treasurer's receipt, it did not shift from Petitioners the ultimate burden of proving their title, which they failed to do.

14. See footnote 13 above.

Secondly, the standing of the United States and Chevron to attack the 1898 "patents" turns, not on whether the United States can show an equitable title or inceptive right antedating the 1898 "patents," as Petitioners contend, but on the grounds for their attack. *Marsh v. Nichols, Shepard & Co.* (1888) 128 U.S. 605 and *Polk v. Wendall* (1815) 9 Cranch (13 U.S.) 87, make clear that the collateral attack rule does not apply to simulated documents, of which the State has no record.

None of the six Louisiana cases cited by Petitioners (including *Albritton v. Shaw* (1920) 148 La. 427, 87 So. 32) is in point, as all involved patents actually issued and recorded in the State Land Office, and not mere simulated or fictitious patents, such as those involved here.[15]

Finally, Petitioners criticize and deride the opinion and reasoning of the Fifth Circuit. Whatever the quarrel Petitioners may promote with the wording of the Fifth Circuit's opinion, its decision is correct under Louisiana and general law.

B.

As the Fifth Circuit held, Act 75 of 1880 is clear on its face in requiring that a patent must be based upon a Treasurer's receipt and must be recorded in the State Land Office. Petitioners attempt to circumvent the clear require-

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15. Petitioners half-heartedly assert that a constitutional issue arises under *Fletcher v. Peck* (1810) 6 Cranch (10 U.S.) 87, because Pierre Leon Buras was a bona fide purchaser from Barrois in 1899. This is impossible, since Barrois acted as agent for Buras, using money put up by Buras, in attempting to buy the land through the crooked Register. In any event, in *Moffat v. United States* (1884) 112 U.S. 24, the Court said:

> "To the application of this doctrine of a *bona fide* purchaser there must be a genuine instrument having a legal existence, as well as one appearing on its face to pass the title. It cannot arise on a forged instrument or one executed to fictitious parties, * * *" (112 U.S. 24, 31-32).

ments of Act 75 by asserting that "since 1871 it was the uniform practice of the Register of the State Land Office to collect the statutory purchase price from a purchaser of State marshlands" (Pet. p. 6), and that the court's holding "overthrows more than 100 years of administrative statutory construction and practice" that payment for State lands may properly be made to the Register (Pet. p. 36).

There is no evidence in the record to support the wholly gratuitous and sweeping statements of Petitioners just quoted. On the contrary, *Tardan v. Davis* (La.App. 1965) 180 So.2d 729, shows the administrative construction and practice adopted after enactment of Act 75 of 1880 and prior to the time the swindler, Lanier, took office. That case dealt with an entry made in 1883 under Act 75 by one Jules Lapene, who obtained "a receipt from the Treasurer and Receiver's Office of the payment of the sum of $29.18" for State lands. In its opinion, the court said:

> "In following the course he pursued, Jules Lapene followed the procedure in vogue at that time" (180 So. 2d 729, 730).

Further, a contemporary construction of Act 75 of 1880 by the then Attorney General and the Register appointed to succeed the crooked Lanier is revealed by the Biennial Report of Register Smith, Lanier's successor, for the years 1900-1902 (Def. Ex. 5a, R. 362).[16] Referring to those fleeced by the crooked Lanier, Register Smith reported in this official document:

> "Many had filed their applications and deposited their money with my predecessor and no entries made and their money gone * * * I have extended every leniency and protection and aided them all I could in

16. Under section 9 of Act 75, the Attorney General was to give his opinion and counsel to the Register whenever requested (Pet. App. p. 9a).

> securing their lands. All those who wished paid the rate per acre again and I credited them with the state fees, acting under *the advice of the Attorney General, he holding that the State Treasurer is the receiver of that fund, the Register only receiver of the fees"* (Emphasis supplied).[17]

Finally, the statements of Petitioners quoted above, which are echoed in substance by the Attorney General's *amicus curiae* brief to the Fifth Circuit, become even more extraordinary in view of the fact that since the passage of Act 215 of 1908 State lands in Louisiana have been sold by the local Sheriffs of the parishes in which the lands are located, who are authorized to receive the purchase monies for such lands and to transmit these monies directly to the Treasurer, thus eliminating the Register in Baton Rouge from any possible receipt of payment for State lands.

It is clear, therefore, that the Fifth Circuit's decision does not and cannot conflict with any long-standing state administrative construction and practice in this regard.[18]

C.

The court below correctly held that after-acquired title did not flow to Petitioners under a deed that expressly excluded warranty. The *en banc* decision of the court below in *Butler v. Bazemore* (5 Cir. 1962) 303 F.2d 188, speaking through a distinguished Louisiana lawyer, Judge John Minor Wisdom, summarized the Louisiana law as follows:

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17. A contemporary view of Barrois' position under Act 75 of 1880 is afforded by an article in the Shreveport Times for August 5, 1900, a copy of which Petitioners introduced into evidence, and the pertinent parts of which are reproduced in the Appendix hereto.

18. In any event, even though Petitioners' description of the practice under Louisiana's land laws were correct (which, as shown above, it is not), practice cannot overcome the clear requirement of positive statutory law (*State v. Standard Oil Company of Louisiana* (1938) 188 La. 978, 178 So. 601, 605-606).

"The doctrine's function is to enforce the vendor's warranty against eviction" (303 F.2d 188, 192, fn. 6).

"*The doctrine of after-acquired title applies only to a vendee holding by a warranty deed*" (emphasis supplied) (303 F.2d 188, 194).

"There were two ways for Bazemore to have avoided this result (the application of the after-acquired title doctrine): (1) he could have executed the Bazemore-Robertson Stores lease *with an express exclusion of warranty* * * *" (Emphasis and parenthetical wording supplied) (303 F.2d 188, 196).

No case decided before or after *Butler* changes or is in conflict with these rules. In the instant case the court below simply applied the law of Louisiana to the facts of the case. Petitioners assert a fanciful argument based on sections of the Louisiana Civil Code of 1870 (articles 2504 and 2505) which never have been held to support an after-acquired title.[19] The court below was clearly correct in following *Butler*.[20]

The Fifth Circuit has therefore not decided any important state question contrary to applicable state law. Fifteen judges of the Fifth Circuit Court of Appeals reviewed this decision on petition for rehearing *en banc* and not one found it in any way contrary to State law. Chief Judge Brown, while dissenting from the decision, not on the merits but on other grounds, was careful to state: "I do not begin to offer even a faint whisper of a suggestion

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19. In the appeal to the Fifth Circuit, Petitioners relied on article 2505. In their petition for rehearing, they switched to article 2504. The Fifth Circuit denied rehearing, 14 to 1. In this Court, Petitioners again rely on article 2504. Obviously their support is not very clear, even in their own minds.

20. The public records doctrine (supra, fn. 8), which the Fifth Circuit did not reach, precludes application of the after-acquired title doctrine in any event.

of possible criticism of the panel's decision on the *merits* of the competing claims." In an opinion specially concurring in the decision Judge Ingraham, joined by Judge Clark, stated that: "While I am in agreement with the panel opinion . . . , believe that it correctly analyzes and interprets the law on the subject and voted against en banc review . . ." Thus, any claim that the decision of the Court below is in conflict with State law is without merit under the unanimous conclusion of all the judges of the Fifth Circuit.

Additionally, it may be noted that the state's brief to the Fifth Circuit disclaims any interest in the holding on after-acquired title (Pet.App. p. 121a),[21] and that apart from its holding on this question, the Fifth Circuit's decision is limited to the unusual and intricate facts presented in this case under a state statute superseded 65 years ago, so that it might well be said that the Fifth Circuit has not decided any important state question, period.

Secondly, the Federal constitutional question suggested by Petitioners was not only correctly rejected by the Fifth Circuit, but is too insubstantial to merit the attention of this court.

There is no reason to grant review on either of these grounds.

II.

The "vital interests" of the State of Louisiana (Pet. p. 23) do not require the granting of the writ, either to review

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21. While disclaiming any interest as such in the after-acquired title issue, the State's brief goes on to urge title in the Petitioners under the doctrine of relation back. But section 5 of Act 75 of 1880 forbids any entry without a Treasurer's receipt, and since no such receipt for Barrois' payment was issued prior to 1898, Barrois did not acquire any equitable right, and the doctrine of relation back does not apply. See *Hussman v. Durham* (1897) 165 U.S. 144.

the decision of the Fifth Circuit on questions of state law, or to order certification of these questions to the Supreme Court of Louisiana.

After 17 years of litigation during which the State of Louisiana never interceded in this case in any way, despite the fact that several State officials, including an Assistant Attorney General and an official of the State Land Office, were called to testify in it, a new Attorney General of Louisiana, after only 7 days in office, filed a motion and brief *amicus curiae* supporting the Buras' petition to the Fifth Circuit for a rehearing and a rehearing *en banc*.[22]

The Buras' petition for rehearing asserted that the three-judge panel had held that a Louisiana patent is invalid unless a Treasurer's receipt can be produced to justify its issuance, and the Attorney General's brief is apparently based on this same misconception (Pet.App. pp. 112a-118a). In fact, the panel's holding was that the absence of a Treasurer's receipt *and* the absence of any record of a purported patent in the State Land Office will render the "patent" invalid.

Rightly understood, the panel's decision is wholly in accord with existing Louisiana law. Accordingly, there is no basis for the fear expressed in the Attorney General's brief, and referred to in the Petition here (Pet. p. 20), that the panel's decision will adversely affect the seemingly settled law of Louisiana as it relates to land patents.

Focusing entirely on the parish recording, and ignoring the other material facts in the case, the Attorney General's brief says that "If the present decision stands, the State Land Office can expect a landslide business in verification

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22. Significantly, the Attorney General's brief does *not* urge abstention by the Federal courts and certification of state questions to the state court.

of the validity of patents of record in the various parishes" (Pet.App. p. 122a). However:

First, seventy-three years have passed since Register Lanier committed suicide, and this is the first case to come to light involving purported patents not paid for to the State Treasurer, and not recorded in the State Land Office records.

Second, as pointed out above, Act 75 of 1880 was superseded by Act 215 of 1908, and since 1908 Louisiana state lands have been sold under a procedure entirely different from that passed on by the Fifth Circuit here.

Finally, patents issued under Act 75 of 1880 duly signed by the Governor and the Register and *of record in the State Land Office* are now and since 1918 have been protected from attack by the State or anyone else for the absence of a Treasurer's receipt or for any other defect under the six-year statute of limitations provided by Louisiana Act 62 of 1912 (see *Atchafalaya Co. v. Williams Co.* (1922) 258 U.S. 190).[23]

There will be no landslide of inquiries to the State Land Office, therefore, and if any inquiries are made, they will be easy to answer.

Properly read, the Fifth Circuit's decision is unquestionably a protection to the State of Louisiana, and promotes stability in titles derived from State patents.[24]

III.

None of the circumstances which justify Federal abstention and certification are present in this case.

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23. Act 62 of 1912 confirmed Louisiana's policy of making titles to lands acquired from the state turn on the state's records. The 1903 patents come squarely within the protection of Act 62; the 1898 "patents" do not.

24. As noted above (p. 7), one of the judges who voted to deny rehearing was a former Louisiana lawyer and Federal District Court judge in Louisiana.

This Court has held that one of two factors must be present to justify resort to Federal abstention: The possibility of avoiding a Federal constitutional question through state construction of an ambiguous statute (*Railroad Comm'n v. Pullman Co.* (1941) 312 U.S. 496, enunciating that doctrine, and *Lake Carriers' Assn. v. MacMullan* (1972) 406 U.S. 498), or the presence of an ambiguous question of local law involving a complex scheme of state regulation of vital interest to the state (*Burford v. Sun Oil Co.* (1943) 319 U.S. 315, and *Kaiser Steel Corp. v. W. S. Ranch Co.* (1968) 391 U.S. 593).

Neither circumstance is present here. First, there are no Federal constitutional questions in this case.[25] Thus, *Pullman* and its progeny, including *Leiter Minerals, Inc. v. United States* (1957) 352 U.S. 220, on which Petitioners so heavily rely, have no application. Second, it is clear that no complex scheme of state regulation is involved in any issue in this case. Nor, as we have shown above, is there a vital state interest in the ancient and ordinary real property questions of this case.

Here the jurisdiction of the Federal district court was properly invoked by the United States, which could not be made a party to the suit brought by Petitioners in the state court. It was therefore the duty of the Federal courts to decide the questions of state law presented, as they did.

This case comes squarely within the rule enunciated in *Meredith v. Winter Haven* (1943) 320 U.S. 228, in which this Court said:

> "In the absence of some recognized public policy or defined principle guiding the exercise of the jurisdic-

25. Petitioners' contention that the decision of the court below quieting title in the United States raises problems under *Fletcher v. Peck* (1810) 6 Cranch (10 U.S.) 87 is without substance or merit (supra, fn. 15, p. 13).

> tion conferred, which would in exceptional cases warrant its non-exercise, it has from the first been deemed to be the duty of the federal courts, if their jurisdiction is properly invoked, to decide questions of state law whenever necessary to the rendition of a judgment" (320 U.S. 228, 324).

In *Allegheny County v. Mashuda Co.* (1959) 360 U.S. 185, this Court reiterated the rule, saying:

> "The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest" (360 U.S. 185, 188-189).

There is no such important countervailing interest here. The real reason for Petitioners' request for abstention and certification is revealed by its timing. Petitioners never mentioned abstention until after the Fifth Circuit panel unanimously decided the relevant questions of Louisiana law against them. They were well aware that the Supreme Court of Louisiana had answered questions of state law after the abstention order in *Leiter Minerals, Inc. v. United States* (1957) 352 U.S. 220 (see *Leiter Minerals, Inc. v. California Co.* (1961) 241 La. 915, 132 So.2d 845; accord, *City of Thibodaux v. Louisiana Power & Light Co.* (La. App. 1960) 126 So.2d 24). The belated nature of Petitioners' request for abstention and certification shows that it is nothing more than a maneuver to gain another and hopefully more favorable forum. As the decisions of this Court

show, abstention was not intended to facilitate such forum shopping.

Where, as here, the "narrowly limited 'special circumstances'" justifying Federal abstention are absent (see *Zwickler v. Koota* (1967) 389 U.S. 241, 248), and Petitioners' plea for abstention and certification was not made until after a unanimous adverse decision on the merits by the Fifth Circuit, abstention and certification would be patently inappropriate, and there is no reason to grant certiorari to order certification.

CONCLUSION

For the reasons stated, the Petition should be denied.

Respectfully submitted,

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(Appendix Follows)

Appendix

Excerpt from the *"Shreveport Times"* for August 5, 1900:

"It is a strange thing that a law that affects so many people should be so little understood. The Register, as such, is not permitted to handle the money that is paid into the Treasury as the price of lands, and he can issue a patent for lands only on the receipt from the State Treasurer, who can not, himself, give such a receipt without a warrant from the Auditor, and both warrant and receipt are recorded in these respective offices and must describe the land wanted and give the purchaser's name.

"It has been the violation of this law on the part of the confiding people all over the State that gave the late Register the opportunity to defraud them.

"They confided their remittances to him, thus making him their agent to do what they should have done themselves, and their agent has proved unfaithful, and instead of putting the money into the Treasury put it in his pocket, and wrote the applicants that the matter would have his future attention.

"Under the law there is no remedy for these unfortunate people, since their agent is dead, unless their money can be recovered from his estate, which is not probable."